

REPLY COMMENTS TO THE FCC
Sunset of Exclusive Contract Prohibition

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Implementation of the Cable Television)	
Consumer Protection and Competition)	
Act of 1992)	
)	
Development of Competition and Diversity)	MB Docket No. 07-29
in Video Programming Distribution:)	
Section 628(c)(5) of the Communications)	
Act:)	
)	
Sunset of Exclusive Contract Prohibition)	

To: The Commission

**REPLY COMMENTS OF THE AMERICAN PUBLIC POWER
ASSOCIATION**

Introduction

APPA is the national service organization representing the interests of more than 2,000 publicly-owned, not-for-profit electric utilities located in all states except Hawaii. Many of these utilities developed in communities that were literally left in the dark as electric companies in the private sector pursued more lucrative opportunities in larger population centers. Residents of these neglected or underserved communities banded together to create their own power systems, in recognition that electrification was critical to

their economic development and survival. Public power systems also emerged in several large cities – including Cleveland, Jacksonville, Los Angeles, Memphis, Nashville, San Antonio, Seattle and Tacoma – where residents believed that competition was necessary to obtain lower prices, higher quality of service, or both. Currently, approximately 70 percent of APPA’s members serve communities with less than 10,000 residents. At present, public power systems operated by municipalities, counties, authorities, states and public utility districts provide electricity to approximately 44 million Americans. Of our members, 111 systems provide cable television services.

The patterns that marked the evolution of the electric power industry are now repeating themselves in the communications industry. As incumbent private communications providers focus on establishing or further entrenching themselves in large population centers, many smaller communities are at risk of falling behind in obtaining the full benefits of the Information Age. These benefits include vigorous economic development, rich educational and occupational opportunity, affordable modern health care, and a higher quality of life. In response, municipal utilities around the country once again have come together to serve their communities by deploying sophisticated broadband communications networks capable of providing video, voice and data services, including some of the only fully

operational, community-wide, fiber to the home (FTTH) networks in the nation. Many of these networks are the result of public-private partnerships.

Comments

APPA endorses the comments and positions taken by the trade associations and consumer groups supporting the extension of the five year prohibition on exclusive contracts between vertically integrated programming vendors and cable operators. Extension of the prohibition is necessary to protect new entrants and other smaller competitors against anticompetitive behavior by larger operators. The removal of the protections provided in Section 628(c)(2)(D) would reduce competition in the cable market and harm the majority of our cable providers.

Surveys have shown that where a municipal utility provides cable service along with an incumbent cable operator, significant competition in price and services exists. Without protection from exclusive contracts to vertically integrated programming the larger operators that currently exist and the emergence of large phone operators in the market, will be able to buy up and withhold programming from any competitor. This will eliminate small and medium sized competition and abuse market power.

Conclusion

APPA applauds the Commission for its efforts to make competitive video services and broadband capabilities available to all Americans, including those in the communities served by APPA's members. Elimination

of Section 628(c)(2)(D) protections would undermine that goal and thus, APPA strongly supports the extension of Section 628(c)(2)(D) for another five years.

Respectfully submitted,

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